

Before the

**Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	§	
Connect America Fund	§	WC Docket No. 10-90
A National Broadband Plan for Our Future	§	GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers	§ §	WC Docket No. 07-135
High-Cost Universal Service Support	§	WC Docket No. 05-337
Developing an Unified Inter-carrier Compensation Regime	§ §	CC Docket No. 01-92
Federal-State Joint Board on Universal Service	§	CC Docket No. 96-45
Lifeline and Link-Up	§	WC Docket No. 03-109

Comments of TEXALTEL

TEXALTEL is a trade association of competitive telecommunications providers that do business in Texas. Inter-carrier compensation and the other issues raised by the Commission in this proceeding are of vital importance to TEXALTEL's members. TEXALTEL submits these comments to Section XV of the Commission's Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking ("*NPRM*") released on February 9, 2011 (FCC 11-13) in the above-referenced dockets.

Inter-carrier Compensation Obligations for VOIP Traffic (p 608-619)

TEXALTEL agrees with the Commission's observations that lack of regulatory certainty regarding VOIP traffic is posing huge problems for providers and State Commissions.¹ TEXALTEL understands the array of interests in this proceeding and the array of options open to the Commission. TEXALTEL concedes that among the possible answers, there are not any obvious or easy answers. The only truly wrong answer would be for the Commission to not act expeditiously and thoroughly to resolve these issues. The industry needs closure and regulatory certainty so that it can proceed forward to adjust business plans and to get on with doing business. While there are choices that we would prefer, we frankly think that the industry can survive and thrive on any of the likelier outcomes provided the Commission does act expeditiously and thoroughly.

As the Commission has acknowledged, the issues over how best to treat VOIP traffic are transitional. If the Commission moves toward a unitary compensation arrangement ("a minute is a minute"), the time will come (soon we hope) when it will not matter if traffic is VOIP, legacy/TDM or

¹ Paragraph 611 in this proceeding.

switched access traffic. Thus, we urge that all facets of this proceeding remain on track for speedy resolution.

The clearer options on the table for the FCC are to declare VOIP traffic to be telecommunications traffic and to treat it the same as other telecommunications traffic or to exempt it from access charges. Taking the first choice, traffic would be treated the same regardless of whether it is VOIP or legacy/TDM traffic. This answer has appeal to those who do not want to build new billing and rating functions for VOIP traffic for the transitional period (from time of implementation of changes pursuant to this portion of the inquiry until the remainder of the compensation issues in this proceeding are implemented). In most cases, the called and calling telephone numbers on a VOIP call can be used to determine its jurisdiction and rating. In some cases, there needs to be a “pop test”, which we will discuss below, wherein the point of origination or termination of a call is the point at which it exits or enters from the PSTN to the internet. This is obviously necessary when there is not an originating number (because the call originated on the internet and there was no telephone number to associate with the originating party). The Commission may decide that such a test is also appropriate when a VOIP provider assigns numbers that are not local to its point of presence where it connects to the LEC.

If the FCC decides to treat VOIP as enhanced and exempt from access charges, the devil is in the details as to how this could be done. For example, the Texas Public Utility Commission has defined VOIP traffic², and has gone on to conclude that only a subcategory of VOIP traffic is “enhanced” and subject to any access charge exemption. The TPUC defined this subcategory so narrowly that it is de minimus, or zero for all practical purposes. The industry and consumers would be much better served to just conclude that VOIP is not “enhanced” – period.

The Texas Commission did comprehend that in some ways VOIP is very different from legacy/TDM telephony. The two most significant differences are that not all VOIP users have phone numbers, and that VOIP users who have phone numbers are not necessarily in the exchange to which the numbers are assigned. Thus the Commission established a “pop test” and recognized that for VOIP traffic, it is more important to recognize the point at which enhanced calls are handed off between the VOIP provider and the Local Exchange Carrier is the point which is important for rating as opposed to the VOIP customer’s phone number (if there is one). This very much resembles the ISP Bound decisions of many years ago that concluded that the telecommunications portion of an ISP Bound call ended at the point at which it was handed off to the ISP. We respectfully disagree with some of the details of the Texas PUC’s “pop test”, in that it requires that the VOIP provider have a physical Point of Presence (POP) in each exchange wherein the traffic to and from that exchange is exchanged with the Local Exchange Carrier. Such a requirement is impractical and could have the result of encouraging providers to construct additional Pops solely for the purpose of avoiding switched access charges. A

² The Texas Commission established 5 tests for determine which calls are “enhanced” VOIP and exempt from access charges. “the Arbitrators conclude that AT&T Texas may not assess access charges upon UTEX when (1) UTEX provides service to a customer that meets the FCC’s definition of an ESP, (2) the ESP customer elects to be treated as an ESP, (3) the ESP has a POP in the AT&T Texas local calling area in which the calling or called end user served by AT&T Texas is located, (4) the traffic is routed through that POP, and (5) the ESP provides an enhanced service for the traffic.” Texas PUC Docket 26381, Arbitration Award, page 36.

recommendation was offered in the Texas Commission's proceeding that a "virtual pop" should be acceptable – a point of connection in which traffic for a designated group of exchanges is exchanged. The trend for VOIP traffic using Internet Protocol interconnection, is to have fewer points of connection that cover wider expanses of territory than with legacy TDM interconnection. While the TPUC's "physical" pop test is workable, we believe that the virtual pop test would be the better answer.

This discussion points to one of the arcane differences between switched access traffic billing and reciprocal compensation for originating traffic. When traffic is switched access, the first LEC on an originating call bills the next provider (the IXC) for the call. When it is reciprocal compensation, the first provider pays the next provider on the call. We urge the Commission to bring some sanity to this issue as it moves toward a unitary compensation arrangement in this proceeding.

The first task facing the Commission is to define what constitutes VOIP traffic. The Commission has already recognized that there is "IP in the middle" (traffic that originates and terminates on the PSTN but transits IP networks somewhere "in the middle") traffic falls outside of most definitions of VOIP traffic. Traffic that is originated from or delivered to a customer premises in IP format is the more common definition. Other issues that arise is whether all traffic that originates from or terminates to a premises via VOIP is to be treated the same, or if there are subsets of "VOIP traffic" that qualify for treatment as "enhanced" and subsets that are "not enhanced". For example, should a call that originates from a customer via VOIP but where the calling and called phone numbers are not in the same local calling area be subject to VOIP compensation rates, or switched access rates? We urge an "all or none" decision - either all traffic that originates from or terminates to a customer via VOIP be defined to be VOIP traffic and subject to exemption from access charges or that there is no special treatment for VOIP traffic.

As stated above, we recognize that the Commission has at least two viable options regarding rating of VOIP traffic (it either is "enhanced" or it isn't) and some details to work out for either answer. As with Comptel, our members are not in unanimous agreement as to which answer is best. We offer the "ISP bound" analogy below as an option for Commission consideration, but are not advocating that it is the only, or best, answer. Again, we emphasize that just about any decision the Commission could make at this point in time is an improvement over the present state of confusion and indecision.

TEXALTEL observes that today's issues surrounding VOIP traffic bear many resemblances to the issues surrounding ISP bound traffic 15 years ago. It is traffic that transits between the internet (either a private internet or the "public" internet, in Internet Protocol format) and the Public Switched Telephone Network (PSTN) in TDM format. IP traffic is growing dramatically, the location of the internet side of the call is indeterminate, and it is being driven by customers' uses of new technologies.

Many of the issues surrounding VOIP have analogies in the ISP bound history. ISP bound traffic was considered "enhanced", declared to be interstate in nature, and was exempted from access charges under most circumstances. Inter-carrier compensation mechanisms and rates were established which set the inter-carrier rates at either zero (bill and keep) or at \$.0007. Once decisions were made, the

arbitrage, and the controversies over ISP bound traffic were largely settled. States have implemented the FCC's decisions and have refined and completed the application of rules to ISP bound traffic.

The Commission has , and can, apply many of the same principals to VOIP that it utilized in establishing rules and rates for ISP bound traffic. Not only does this make theoretical sense, but it provides for more consistency as the Commission tries to consolidate many conflicting rate theories (such as reciprocal compensation and switched access). Texas, for example, has attempted to craft a VOIP compensation that resembles, in some respects, ISP bound principals, and departs in other respects.

At the heart of the ISP Bound methodology was the determination that ISPs were entitled to purchase services at the same rates that business customers paid for local business lines, followed by requirements that intercarrier compensation for ISP bound calls should replicate the intercarrier compensation for local calls. Thus, the point at which the Local Exchange Carrier delivered traffic to the ISP was to be considered to be the point of termination for jurisdictional and compensation purposes. Since the telephone numbers assigned to ISPs were usually at the point of point of delivery, these principals allowed the same rating and compensation technologies to be used for ISP bound traffic as for other consumer calls. In Texas, it was recognized that some numbers assigned to ISPs were not local to the point of delivery, and that portion of the traffic is considered "FX type" and is exchanged as "bill and keep", or zero compensation.

A terminating VOIP call (a PSTN customer is calling the VOIP customer) can be almost the same as an ISP bound call where calls originate on the PSTN and terminate to a VOIP provider's gateway at some location. This is a voice to internet call. An originating call (a VOIP customer is calling a PSTN customer) is in theory the reverse of the ISP bound analogy.

The conclusion of this discussion is that most of the VOIP related compensation issues presently on the table can be resolved with the ISP bound analogy, creating one category of traffic – traffic to and from the internet. Once done, that step leads handily to the next steps – unifying the rates and regulations for internet traffic, access traffic, and 251 (b) 5 local traffic. We suggest (1) declaring that VOIP originated and VOIP terminated (not VOIP in the middle) traffic be subject to the same compensation rules as ISP bound traffic – i.e. subject to compensation under either Bill and Keep or \$.0007. There is much debate within the industry as to whether ALL VOIP originated and terminated traffic should be subject to the same compensation treatment, or if the "enhanced services" exemption is for calls that are jurisdictionally local. It is a known fact that a VOIP phone number cannot be relied on to indicate the location of the VOIP customer. For many reasons, we recommend that should the Commission pursue this option, that all VOIP originated and terminated traffic be compensated in the same manner – the same as ISP bound traffic.

In determining appropriate treatment of ISP bound traffic, the Commission recognized that technologies in place at that time did not lend themselves to separately identifying ISP bound traffic that was mixed with other local traffic, and the Commission developed a "default" that any traffic that exceed originating traffic by more than 3:1 should be considered ISP bound. In the ISP bound

environment, where all ISP bound traffic was in the same direction (from the PSTN to the internet) the 3:1 default ratio worked. Since VOIP traffic is bidirectional, default ratios do not work. There are different means that the industry can deal with either determining VOIP volumes separately from other traffic, or agreeing to compensation plans where it doesn't matter.

Rules to Address Phantom Traffic (p620-634)

TEXALTEL respectfully suggests that much of the alleged "phantom traffic" issue is a direct result of FCC inaction. The fact that the status of VOIP traffic has remained undefined for many years has encouraged some providers to push the envelope and to devise their own definitions and write their own rules. There have been court decisions in some cases declaring a provider to be an "enhanced services provider" and ordering access charges inapplicable.ⁱ

If the Commission succeeds in this proceeding in bringing clarity and closure to the definition of VOIP and the appropriate compensation for such traffic, many of the incentives to disguise the nature of traffic will likely be removed.

TEXALTEL certainly agrees with appropriate requirements to pass appropriate identification with calls, but recognizes that there will inevitably be some situations where that cannot be done. For example, calls that originate on the internet may not have a telephone number to associate with the call. In that case, a provider could insert a number that identifies the point of entry of the call into the PSTN, although care must be taken to avoid inaccurate caller ID indications.

Rules to Reduce Access Stimulation (p635-639)

Please see our comments under Access Rate Regulation below.

Access Rate Regulation (p640-657)

TEXLATEL strongly agrees that the present access rates for rural telcos has created arbitrage opportunities. The incremental costs of switched access minutes for rural carriers are moving closer to urban incremental costs. This is due to the newer switching technologies that are much more scalable, and for which the entry costs for small scale operations, such as a rural LEC, are much lower. We agree wholeheartedly with the Commission's goal of moving rural access rates closer to urban access rate levels. We believe that equalizing urban and rural rates will eliminate the perverse incentives that have stimulated traffic pumping. We urge the Commission to deal swiftly with the underlying problem, and not get preoccupied with bandaid type fixes. As long as the underlying incentives exist, crafty companies will find ways to profit from it in ways that the Commission will hate.

Proposed Access Stimulation Rules (p658-677)

Again, as discussed in the prior comment, TEXALTEL suggests that coming to grip with appropriate rural switched access rate reductions may go a long way toward eliminating inappropriate access rate stimulation. Rural access rates are the problem. Access stimulation is a symptom. In the short run, requiring immediate access reductions whenever a revenue sharing agreement is inked is a small band aid. Such bandaids tend to cause confusion and are easily worked around by determined entrepreneurs. But if the FCC addresses the underlying cause and problem, there will not be a market for stimulated access.

TEXALTEL thanks the Commission for this opportunity to comment on this proceeding.

Respectfully submitted,

TEXALTEL

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ⁱ Cite from footnote 1, page 1, of Amicus Curiae brief of Transcom Enhanced Services, Inc. in Texas PUC Docket 33323. *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and other, affiliates*, ALJ Initial Decision, Penn. PUC (rel. August 11, 2009), available at <http://www.puc.state.pa.us/pcdocs/1050493.doc>. This decision squarely and specifically finds on pages 32-33 that Transcom is an ESP.